

ORIGINAL

TRANSCRIPT OF PROCEEDINGS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

IN THE MATTER OF: DOCKET FILE COPY ORIGINAL WT DOCKET NO. 95-26

Commercial Realty St. Pete, Inc.,
James C. Hartley, Teresa Hartley,
and Ralph E. Howe

DATE OF CONFERENCE: July 21, 1995 VOLUME: 1

PLACE OF CONFERENCE: Washington, D.C. PAGES: 1 - 26

FREE STATE REPORTING, INC.
Court Reporting Depositions
D.C. Area (301) 261-1902
Balt. & Annap. (410) 974-0947

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

In the matter of:

Commercial Realty St. Pete, Inc.
 James C. Hartley, Teresa Hartley,
 and Ralph E. Howe

Docket No. 95-26

The above-entitled matter came on for conference pursuant to Notice before Arthur I. Steinberg, Administrative Law Judge, at 2000 L Street, N.W., Washington, D.C., in Courtroom No.3, on Friday, July 21, 1995, at 10:00 a.m.

APPEARANCES:

On behalf of Commercial Realty St. Pete, Inc.:

LAUREN COLBY, ESQUIRE
 10 East 4th Street
 Frederick, Maryland 21701

On behalf of the Wireless Telecommunications Bureau:

JOSEPH PAUL WEBER, ESQUIRE
 TERRENCE E. REIDELER, ESQUIRE
 1919 M Street, NW
 Washington, D.C. 20554

Conference began: 10:00 a.m.

Hearing Ended: 10:32 a.m.

FREE STATE REPORTING, INC.
 Court Reporting Depositions
 D.C. Area (301) 261-1902
 Balt. & Annap. (410) 974-0947

P R O C E E D I N G S

1
2 JUDGE STEINBERG: If I'm speaking too loudly or too
3 softly please let me know. This is a further prehearing
4 conference in WT Docket No. 95-26, involving the question of
5 whether Commercial Realty St. Pete, Inc., or CRSPI, James C.
6 Hartley, Teresa Hartley and Ralph E. Howe should be barred
7 from participating in further Commission auctions or from
8 holding Commission licenses. The appearances today are the
9 same as they were at our initial conference. For the Wireless
10 Telecommunications Bureau, we have Joseph Paul Weber and
11 Terrence E. Reideler. For CRSPI, James C. Hartley and Teresa
12 Hartley, we have Lauren Colby and Mr. Colby is attending by
13 speaker phone and his motion to participate in that manner is
14 granted. Also participating in the conference by speaker
15 phone is James C. Hartley, and there's no appearance by Ralph
16 E. Howe or anyone else appearing for him. I scheduled this
17 conference after I received on July 18th the Wireless
18 Telecommunication Bureau's request for sanctions or in the
19 alternative motion to enlarge. Since the exhibit exchange
20 date is less than a week away, I believe that the matters
21 raised in that pleading should be resolved immediately. For
22 the record, my legal technician Barbara Beach telephoned Mr.
23 Colby and Mr. Weber on July 18th to inform them of the
24 scheduling of this conference. She also notified them at that
25 time that (1) the Bureau should be prepared to list documents

1 or categories of documents which have not as yet been
2 produced. (2) Mr. Colby should be prepared to explain why
3 CRSPI has not as yet produced all of the document it has -- it
4 was directed to produce in memorandum, opinion and order FCC
5 95-M-143 released June 20th, 1995, and when CRSPI will produce
6 those documents. And (3) we will discuss the possible
7 extension of time within which the Bureau may complete
8 discovery and the possibility of allowing the Bureau to
9 supplement its direct case after it has completed its
10 discovery. Am I correct so far, Mr. Colby?

11 MR. COLBY: That is affirmative.

12 JUDGE STEINBERG: Mr. Weber?

13 MR. WEBER: That is correct.

14 JUDGE STEINBERG: Mrs. Beach also faxed a copy of
15 the Bureau's motion to Mr. Colby and you did receive it. Is
16 that correct, Mr. Colby?

17 MR. COLBY: Yes, that's correct. I filed a response
18 to it.

19 JUDGE STEINBERG: Right. Yesterday on July 20th,
20 Mr. Colby faxed an opposition to the Bureau's motion to me and
21 to -- Weber and Reideler. And for either one of you, have you
22 received this fax and have you reviewed it?

23 MR. WEBER: Yes, we have received it and we have
24 reviewed it.

25 JUDGE STEINBERG: Okay. Now let's get to the heart

1 of the matter, and why don't I turn it over to I guess Mr.
2 Weber and Mr. Reideler and tell me what documents you haven't
3 gotten specifically that you want.

4 MR. WEBER: We still believe we're missing many
5 phone records that are relevant to this proceeding.
6 Specifically, phone records dealing with the month of August,
7 from August 1st through August 8th, 1994.

8 MR. COLBY: (Indiscernible)

9 JUDGE STEINBERG: Okay. August 1 through 8. What
10 year?

11 MR. WEBER: 1994.

12 JUDGE STEINBERG: '94.

13 MR. WEBER: Any hotel bills from the Omni Shoreham
14 while they were staying in the Omni during July and August
15 1994 which reflect phone calls made, and cellular phone bills
16 from late-July through August 8th, 1994.

17 JUDGE STEINBERG: That's late-July and August '94.
18 And those are -- anything else?

19 MR. WEBER: Well, Mr. Reideler has also made note of
20 things that were promised in Mr. Hartley's deposition of
21 documents which would be delivered which we have not received
22 as well.

23 JUDGE STEINBERG: Go on and just date those.

24 MR. REIDELER: I should clarify, Your Honor, these
25 were conditionally promised on these documents in fact being

1 available to Mr. Colby and to Mr. Hartley. The first one, Mr.
2 Colby acknowledged that there is an infomercial tape that
3 should have been turned over in discovery and he stated that
4 he would send it -- send a copy to us if he in fact had that.
5 We haven't heard whether or not in fact --

6 MR. COLBY: We have not -- well, we want the
7 infomercial tape because we need it for a lawsuit we're
8 filing. But I regret to say, and I guess Mr. Hartley is not
9 aware of this, that I have searched the office for it and
10 can't find it.

11 JUDGE STEINBERG: Why don't we complete --

12 MR. COLBY: Do you have another copy of that
13 infomercial tape anywhere?

14 JUDGE STEINBERG: Mr. Colby, why don't we complete
15 listing the documents and then I'll -- and then I'm going to
16 turn the conference over to you and you can respond to each
17 one?

18 MR. COLBY: Okay.

19 JUDGE STEINBERG: I think would be more efficient.

20 MR. COLBY: I think Mr. Hartley will probably want
21 to respond if that's all right.

22 JUDGE STEINBERG: No, that's -- if the Bureau
23 doesn't have any objection I don't have any. Why don't we
24 continue, Mr. Reideler?

25 MR. REIDELER: There is a second item which consists

1 of six pages of handwritten notes that were illegible and Mr.
2 Hartley had promised to consult the originals and transcribe
3 them for us when he returned to Florida and we've yet to
4 receive a transcription of that. So, those are the two other
5 items.

6 JUDGE STEINBERG: So, that -- so, we've got phone
7 records from August 1st to 8th, 1994, hotel bills which
8 reflect phone calls from July-August '94, when Mr. Hartley was
9 in Washington, cellular records phone calls from late-July '94
10 into August '94, the infomercial tape, and the six pages of
11 illegible handwritten notes.

12 MR. REIDELER: Which were Exhibit 10 at the
13 deposition.

14 JUDGE STEINBERG: Mr. Colby, why don't you respond
15 to each of these? I mean, have you had a chance to list them?

16 MR. COLBY: Yes, I've listed them. I'll read them
17 off and then I'll ask Mr. Hartley to --

18 JUDGE STEINBERG: Now, some of these matters were
19 covered in your opposition.

20 MR. COLBY: Well, some -- at least one matter was
21 covered incorrectly in my opposition. I said that we
22 acknowledged that Mr. Hartley had made phone calls to Chris
23 Pedersen. Well, he does know that, but not the
24 particular phone call that, that was mentioned in the Bureau's
25 pleading. He does not recall making that particular call. He

1 | doesn't think he did.

2 | JUDGE STEINBERG: Why don't we --

3 | MR. COLBY: But he does acknowledge calling Mr.
4 | Pedersen those other times using the 800 number.

5 | JUDGE STEINBERG: Why don't we, why don't we go down
6 | the list, Mr. Colby?

7 | MR. COLBY: Mr. Hartley, the phone records for
8 | August 1, 1994, through August 8th, 1994, what's the story on
9 | those?

10 | MR. HARTLEY: The actual phone records --

11 | COURT REPORTER: I can't hear Mr. Hartley.

12 | JUDGE STEINBERG: Mr. Hartley, you're going to have
13 | to speak up because we can't hear you.

14 | MR. HARTLEY: Yes, sir. The memorandum and opinion
15 | and order which listed -- that we produced items number 6, 23,
16 | number 6 said all the documents relating to obtaining
17 | financing which were all the telephone records that I did
18 | submit obtaining financing. Item 23 were all the documents
19 | prepared by Commercial Realty or other persons that
20 | participated in the auction and were submitted to the winning
21 | bid. There was no indication of actual telephone records of
22 | voice conversations between August 1st and August 8th that,
23 | that were requested.

24 | JUDGE STEINBERG: Wait --

25 | MR. HARTLEY: Some records were requested which we

1 submitted.

2 JUDGE STEINBERG: Wait a minute. Have you got
3 records from August 1st to August 8th showing --

4 MR. HARTLEY: Conversations?

5 JUDGE STEINBERG: Yeah.

6 MR. HARTLEY: Yes, sir, I do.

7 JUDGE STEINBERG: Okay. Produce them.

8 MR. HARTLEY: Yes, sir.

9 JUDGE STEINBERG: Okay. That takes care of the --

10 MR. COLBY: Next item, hotel bills from the Omni
11 Shoreham reflecting telephone calls.

12 MR. HARTLEY: Okay. I did not pay for any of the
13 hotel bills. My father had paid for everything and he did not
14 give me copies of any of the hotel bills or records or copies
15 of phone calls and I don't have them and we're, we're not on
16 speaking terms.

17 MR. COLBY: That is true.

18 JUDGE STEINBERG: So, you can't get the records from
19 your father?

20 MR. HARTLEY: That's correct.

21 JUDGE STEINBERG: Do you want to -- that takes care
22 of number two. I'll let Mr. Weber respond.

23 MR. COLBY: (Indiscernible)

24 JUDGE STEINBERG: Respond at the end.

25 MR. COLBY: The next item is cellular phone bills

1 for the -- records of cellular phone calls for the period
2 late-July to early-August 1994.

3 MR. HARTLEY: Yes, sir. As it turns out my -- there
4 were no cellular calls made during that time where I had my
5 cellular phone in Washington, D.C., and it was because the
6 battery was no longer -- it was dead. And it was a mobile so
7 there are no phone calls that were made during those dates on
8 my cellular phone.

9 MR. COLBY: Okay.

10 JUDGE STEINBERG: Okay. So that --

11 MR. COLBY: The next item is the infomercial and
12 that's my, my baby really because I was supposed to look for
13 the infomercial tape. I have looked for the infomercial tape,
14 I need it for something that we're doing and as yet I have not
15 located it despite fairly thorough search. But it may still
16 be here. I'll try again today to find it.

17 JUDGE STEINBERG: Now, does Mr. Hartley have a copy
18 of that tape?

19 MR. COLBY: That's what I was just asking him,
20 whether he -- do you have another -- McNulty & Associates
21 audio tape that we had?

22 MR. HARTLEY: No, sir. All the tapes of those I
23 sent to you.

24 MR. COLBY: Yeah, and I think I did see -- well,
25 I'll, I'll just say to both you and to the government I'll

1 look some more.

2 MR. HARTLEY: I understand the FTC may have a copy
3 of it though. I don't know if we can get it from them.

4 JUDGE STEINBERG: I'm pretty sure that you did send
5 me a copy, I just can't seem to locate it, because the audio
6 tapes are very small and they don't fit in the files and it
7 could be up here in my desk some place. Matter of fact, just
8 a second. Hold on a minute. I see a tape sitting right here
9 in, in my -- no, this is a tape about something completely
10 different.

11 JUDGE STEINBERG: Okay. Well, if you find the, if
12 you find the tape, produce it.

13 MR. COLBY: I want the tape more than the government
14 wants the tape, and I'll certainly look for that tape.

15 JUDGE STEINBERG: Then you're directed if you find
16 it to produce it --

17 MR. COLBY: Absolutely.

18 JUDGE STEINBERG: -- within, you know, a couple of
19 business days.

20 MR. COLBY: We'd produce it instantly. We'd produce
21 it the same day.

22 JUDGE STEINBERG: Okay. Now, the last thing is the
23 six pages of handwritten notes.

24 MR. HARTLEY: The six pages of handwritten notes.
25 As I indicated, those were not my notes. Those were -- I

1 believe they were John Hartley's notes. I did not have the
2 originals. However, I can locate John Hartley and ask him if
3 he has the originals and if so make a legible copy for your --
4 for you.

5 JUDGE STEINBERG: Who's John Hartley?

6 MR. HARTLEY: John Hartley is not a relative. He is
7 an associate that helped -- that participated with me
8 immediately after the auction and before the auction doing
9 research and miscellaneous endeavors for -- in preparation for
10 the auction.

11 JUDGE STEINBERG: Today is Friday, the 21st. I'd
12 like you to see if you can get that done by next Friday.

13 MR. HARTLEY: Yes, sir.

14 JUDGE STEINBERG: Or sooner.

15 MR. COLBY: So, we have two items that we need to
16 produce right away, and those are the six pages of handwritten
17 notes recopied or made better and the phone records for the
18 period 8/01/94 to 8/08/94. When will you be able to send me
19 the phone records, Jim?

20 MR. HARTLEY: As you know, I'm leaving for out of
21 town tonight so I will do that today. I will at least fax
22 those to you and make a hard copy to send to you today.

23 MR. COLBY: And I'll fax them to the Bureau.

24 MR. HARTLEY: Okay. Now, as I mentioned before, I
25 don't know the status of the handwritten notes from, from Mr.

1 John Hartley. All I can do is ask him and if he's got them,
2 I'm sure he'll give them to me.

3 JUDGE STEINBERG: Well, as I said, produce those by
4 Friday, July 28th, and if for some reason you can't, let the
5 Bureau know.

6 MR. HARTLEY: Yes, sir.

7 JUDGE STEINBERG: And also the reasons why, why it
8 can't be produced.

9 MR. HARTLEY: Yes, sir.

10 JUDGE STEINBERG: So, the cellular records don't
11 exist. Now, the hotel bills, Mr. Weber?

12 MR. WEBER: I guess I would only comment about
13 whether any attempt has been made to actually get copies of
14 the hotel bills from the Omni.

15 MR. HARTLEY: Attempts have been made to approach my
16 father asking him for information and absolutely no has been
17 the answer.

18 MR. WEBER: I didn't actually ask from your father.
19 It was from the Omni Shoreham. I mean, if you were the person
20 who -- if it was registered under your name, the Omni could
21 get you a copy.

22 MR. HARTLEY: Well, in actuality it wasn't.
23 They -- my dad had registered all the hotels under his, his
24 name I believe and, and taken care of the, the whole hotel
25 arrangement. We didn't do anything other than show up and,

1 and sleep in the rooms.

2 JUDGE STEINBERG: If -- let me make a suggestion,
3 and the suggestion is if you would provide Mr. Weber or Mr.
4 Reideler with your father's name and address and phone number
5 and you want me to subpoena those records, you know, you can
6 prepare a subpoena and I'll sign it. Now, once I sign it it's
7 up to you to get the records or -- I mean, I have no
8 enforcement mechanism. If you want the subpoena enforced you
9 have to go to the U.S. Attorney. Now, whether you want to do
10 that or not, that's entirely up to you.

11 MR. WEBER: Your Honor, we actually --

12 JUDGE STEINBERG: We can discuss that possibility
13 later.

14 MR. WEBER: We have already deposed Mr. Hartley's
15 father and I -- my recollection was he testified that he did
16 not pay for the hotel room. I mean, I can check the
17 transcript. That's just my recollection is that he testified
18 he did not pay for the hotel rooms for James and Teresa
19 Hartley.

20 JUDGE STEINBERG: Well, this is something that
21 perhaps you and Mr. Colby can talk about informally and which
22 I don't want to get involved in unless I absolutely have to.
23 But if -- you know, I'm fully prepared to sign a subpoena
24 directed to whomever to produce -- you know, to produce those
25 records and what the mechanics of the production are you're

1 going to have to work out. So, we've got it all covered with
2 respect to those.

3 MR. HARTLEY: Let me make one other correction. Now
4 that I think about it after Mr. Weber mentioned that, I
5 actually believe my brother made the arrangements and my
6 father paid for them. Because I remember my brother arranging
7 for five rooms and saying "I've got these rooms already," and
8 then my dad paying for them.

9 JUDGE STEINBERG: Well, why don't, why don't we
10 leave it this way? Mr. Hartley, are you on speaking terms
11 with your brother?

12 MR. HARTLEY: Yes, sir.

13 JUDGE STEINBERG: See if your brother can talk your
14 father into giving up the records.

15 MR. HARTLEY: Okay.

16 JUDGE STEINBERG: I mean, try to get them.

17 MR. HARTLEY: Sure. I mean, I will. Yes, sir.

18 JUDGE STEINBERG: Now --

19 MR. HARTLEY: I have no problem giving my dad's name
20 and address and I'm -- and he's fully cooperative. I'm sure
21 if he were questioned for the receipts he would readily
22 produce them.

23 JUDGE STEINBERG: Well, that's, that's something
24 that we're not going to work out here today. Just make all
25 good-faith effort to get it done.

1 MR. COLBY: Well, let me ask a question. Does the
2 Bureau have Jim's, or Mr. Hartley's father's name and phone
3 number?

4 MR. WEBER: Yes.

5 MR. COLBY: Okay.

6 JUDGE STEINBERG: Okay. Let me -- it's in -- I'll
7 leave it up to Mr. Weber. Now, when you get these documents,
8 you won't know until you see them whether you need any further
9 discovery. Is that correct?

10 MR. WEBER: That's correct.

11 JUDGE STEINBERG: So, we'll leave that door open,
12 but I would, I would say that I would be willing to give you a
13 reasonably -- a reasonable period of time, although a short
14 period of time, within which to have any kind of -- any sort
15 of additional discovery and what I will say to you, and I want
16 you to pay careful attention to this, and that is I'm sure Mr.
17 Colby will not impose any obstacles to you getting reasonable
18 additional discovery. When you decide whether you need it and
19 what you need, you call Mr. Colby up and you arrange it with
20 him, and I'm sure Mr. Colby will cooperate. Is that correct,
21 Mr. Colby?

22 MR. COLBY: Yeah, absolutely.

23 JUDGE STEINBERG: And I don't want to get involved
24 in it if I don't have to get involved in it. So, don't come
25 to me in the first instance. With respect to -- you know, but

1 I think given the fact that certain materials have not been
2 produced until late that you are entitled to additional
3 discovery. In case you're wondering what that noise is, I'm
4 fighting with my chair. I had to get it up over a hump on the
5 chair thing underneath the chair. Now, with respect to -- I
6 want to exchange the direct case when you're supposed to, and
7 I'll permit you to supplement it after you've had additional
8 discovery. Now, whatever supplement that you'll be submitting
9 has to be directly related to the additional discovery. I'm
10 not going to let you second-guess -- you know, gee, we forgot
11 to change this and this is a good opportunity, we'll sneak
12 this in. So, it's got to be directly related to the
13 additional stuff. Otherwise, it's not fair to Mr. Colby.
14 Without knowing when the additional discovery is going to
15 be -- is scheduled, I can't imagine setting a date for the --
16 any supplement. Do you have any suggestions on that, Mr.
17 Colby?

18 MR. COLBY: Well, I don't -- I actually have no
19 objection to having additional discovery if that's the desire.
20 Although I assume the discovery will be related to the
21 documents to be turned over.

22 JUDGE STEINBERG: Absolutely. Yeah, it'll be
23 totally restricted to that -- to the --

24 MR. COLBY: But I certainly have no objection to the
25 Bureau having additional discovery after it gets these

1 documents if there's something else they want.

2 JUDGE STEINBERG: Okay, and --

3 MR. COLBY: And Mr. Hartley, you agree with that
4 don't you?

5 MR. HARTLEY: Yes, sir, I do.

6 JUDGE STEINBERG: Well, you know, I'm not saying --
7 when you get the documents I'm not saying they can ask for
8 more documents. What I'm saying is that if they need to ask
9 questions about what the documents are, whose number is this,
10 whose number is that --

11 MR. COLBY: We'll provide that information.

12 JUDGE STEINBERG: Yeah. I mean, just, you know, see
13 if you can do it informally without anything formal. But I'm
14 not -- you know, I'm not saying that, gee, you know, we've got
15 these documents and now I want 200 more.

16 MR. COLBY: We have no objection to extending the
17 time for that to occur.

18 JUDGE STEINBERG: Now, the --

19 MR. COLBY: Why don't you simply move the time for
20 completion of discovery to a week after these documents are
21 due? These documents are due -- the last set of documents is
22 due July 28th.

23 JUDGE STEINBERG: That's true. But then, but then
24 you might not get the tape and you might not get the hotel
25 bills.

1 MR. COLBY: For something we want.

2 JUDGE STEINBERG: I'm just going to leave it open-
3 ended, but it's got to be, it's got to be done within a
4 reasonable period of time. And the same thing with
5 supplementing your direct case. If you want to supplement
6 your direct case, you know, I'll allow you to do it but it's,
7 it's got to be within -- got to give Mr. Colby a chance to --
8 I'm not saying -- don't do it on September 11th. And if you
9 do it on September 11th then Mr. Colby is going to have an
10 opportunity to prepare for whatever additional material -- I
11 have to be fair to everybody. So what I'm saying is don't --
12 you know, I'm going to give you a reasonable period of time
13 but don't overdo it. Is that understood?

14 MR. WEBER: Understood.

15 JUDGE STEINBERG: Mr. Colby?

16 MR. COLBY: Understood.

17 JUDGE STEINBERG: Okay. Now, the next question I
18 have is the Bureau's motion was called a request for
19 sanctions, but it didn't say in the motion what type of
20 sanctions should be imposed and I want to ask the Bureau to
21 address that. Do you want -- what specific sanctions do you
22 want me to impose?

23 MR. WEBER: Well, here since at this time Commercial
24 Realty is not an applicant, it was the Bureau's impression the
25 only type of sanctions you would have authority to impose

1 would be monetary.

2 JUDGE STEINBERG: How can I impose monetary
3 sanctions? What rule have they violated which would allow me
4 to -- you're talking about a forfeiture?

5 MR. WEBER: Yes. Well --

6 JUDGE STEINBERG: Forfeitures -- my understanding
7 and, you know, I might be wrong because I don't deal with this
8 every day, is that in order to impose a forfeiture it has to
9 be a violation of a specific rule and there has to be a -- or
10 a violation of a statutory provision of the Communications
11 Act. And, you know, what specific rule are you going to tie
12 this to?

13 MR. WEBER: I believe Sections 1.311 and 1.325 which
14 deal with discovery.

15 JUDGE STEINBERG: Well, in effect, aren't they being
16 sanctioned by being ordered to produce the documents
17 expeditiously and giving you an opportunity to do this -- you
18 know, I just don't see any need for any sanction here. As a
19 matter of fact, I don't, I don't really see much need for us
20 to be here today anyway because this all should have been
21 worked out informally. In the first prehearing conference we
22 had on March 29th, 1995, at page 17 I said, "I'm going to give
23 you my standard spiel on discovery, which is with regard to
24 discovery make a good-faith attempt to work out your
25 differences among yourselves," you know, which at that time

1 | you'd apparently been doing. "And a serious and genuine
2 | effort should be made to compromise with each other. Please
3 | don't come to me for a ruling on discovery -- on a discovery
4 | matter without first attempting to reach an agreement. Only
5 | if you can't reach an agreement, if you hit a brick wall, do I
6 | want you to come to me for a ruling, etc., etc." And you
7 | never picked up the phone and called Mr. Colby and said we
8 | want this stuff, did you?

9 | MR. WEBER: At, at this point, no, we did not, Your
10 | Honor.

11 | JUDGE STEINBERG: Okay, and you should have rather
12 | than filing a motion and if Mr. Colby said we've given you
13 | everything that we intend to give you, you're not getting
14 | anymore, then you come to me. And also, you know, Mr. Colby
15 | doesn't come in with exactly clean hands either because he was
16 | supposed to produce this stuff on July 5th and didn't and, and
17 | Mr. Colby didn't pick the phone and say I'll get it to you by
18 | the 7th, is that okay? And --

19 | MR. COLBY: That's true, Your Honor, and I regret
20 | that I did not.

21 | JUDGE STEINBERG: Okay. So, you know, what I'm
22 | saying is, you know, let's pick up the phone and talk to each
23 | other. There's no need to involve me in this. Although --
24 |]well, I shouldn't say what I was going to say so I won't. I
25 | mean, I don't see any need for any kind of imposition of a

1 sanction here. This is really pretty small, pretty small
2 potatoes dispute so, you know, I'm not going to impose any
3 kind of sanction. Do you still want the issues enlarged?

4 MR. WEBER: In light of what was just said, no, I
5 don't believe we need to at this time. We'll wait and see if
6 they do indeed come forth with the documents as promised.

7 JUDGE STEINBERG: Well, I'm -- you know, I'm
8 prepared to, I'm prepared to state preliminarily that if there
9 are documents that are in their possession -- obviously you
10 can't produce something you don't have. And, and if there are
11 documents that are, that are in their possession that they
12 don't produce, I'm fully prepared to, to make a ruling at the
13 appropriate time that, that it will be assumed that had the
14 documents been produced they would have reflected facts
15 adverse to CRSPI or, or to Mr., Mr. or Mrs. Hartley, but --
16 you know, we're not to that stage yet. And that's the only --
17 I think that's the only thing that I can do. But I don't, I
18 don't think that either, either -- I don't think enlargement
19 of the issues would serve any useful purpose. I mean, the
20 issues that, that we have here are pretty serious and would
21 have pretty serious effect on CRSPI and the Hartleys if it's,
22 if it's resolved -- if they're resolved against them. And I
23 think adding an issue to determine whether there was an abuse
24 of process would be, would be a total waste of time. Because
25 I think what this is is perhaps misunderstandings, lack of

1 attention to detail and maybe -- and failure to communicate.
2 I don't think it's an abuse of process by any stretch of the
3 imagination. Anything else we have to talk about today, Mr.
4 Weber?

5 MR. WEBER: I would like to just raise an issue more
6 for clarification dealing with the direct case. I know the
7 preference is certainly having a written direct case.
8 However, not all witnesses or potential witnesses of course
9 are under the Bureau's control. And to that regard, is it
10 acceptable if the witness is not under our control or not
11 willing to sign any type of written testimony if we can just
12 list witnesses we intend to call for direct as a part of the
13 direct case in addition to having written testimony from the
14 witnesses which we can secure written testimony from?

15 JUDGE STEINBERG: Okay. I, I see. I didn't --
16 yeah, that's -- obviously, obviously probably nobody's within
17 your control.

18 MR. WEBER: That is true.

19 JUDGE STEINBERG: So, so what I -- you know,
20 obviously you can exchange whatever documents -- whatever
21 documentary evidence that you would have. And in terms of
22 witnesses, if you can't get them to sign statements, I want
23 you to on, on the exhibit exchange date give a list of the
24 witnesses' names, addresses, phone numbers and an outline or a
25 summary of their expected testimony. I just don't want you to

1 say John Doe will testify with respect to issue one. I want
2 you to outline what you expect them to say. Now, we will
3 recognize that what you expect them to say and what they might
4 say might be different, but to the best of your knowledge, I
5 want you to do that. Because Mr. Colby should have a full and
6 complete opportunity to prepare for that, and the same goes
7 for Mr. Colby. If you have witnesses that you proposed to
8 call -- well, I don't know if you're going to put on a direct
9 case.

10 MR. COLBY: I am going to put on a direct case.

11 JUDGE STEINBERG: Okay. So --

12 MR. COLBY: The direct case is going to consist
13 solely of statements we've previously submitted. We're not
14 going to have anything new.

15 JUDGE STEINBERG: Okay.

16 MR. COLBY: I don't want to bound by that, but
17 that's my thinking at the present time.

18 JUDGE STEINBERG: Okay. If you want to -- you know,
19 but, but --

20 MR. COLBY: The infomercial tape might, might be
21 something, if we can find it we would want to put in our
22 direct case, but at the moment I don't know.

23 JUDGE STEINBERG: Okay, and I think we talked about
24 that and I, and I said I'd like you to -- if you do use the
25 tape I want you to have a transcript of the words.

1 MR. COLBY: Right. I have had transcribed a tape
2 from Eon Corporation. I don't know whether I'll be offering
3 that or not.

4 JUDGE STEINBERG: I see. The other one is a
5 different tape?

6 MR. COLBY: Yeah.

7 JUDGE STEINBERG: Okay.

8 MR. COLBY: I had the Eon tape transcribed. But the
9 infomercial tape from McNulty & Associates is an audio tape.

10 JUDGE STEINBERG: I see. Are they another equipment
11 supplier?

12 MR. COLBY: No, they were people who promoted the,
13 the auction and made certain representations as to the value
14 of the spectrum that was to be purchased.

15 JUDGE STEINBERG: Okay. Did they bid on their own
16 behalf?

17 MR. COLBY: No. These were -- McNulty & Associates
18 have been since closed down by the Federal Trade Commission.
19 I believe a consent decree was issued --

20 JUDGE STEINBERG: Okay.

21 MR. COLBY: -- against their operations. But David
22 Hartley who is James Hartley's brother has advised me that he
23 specifically relied upon some of the representations made in
24 that tape.

25 MR. REIDELER: Your Honor, with regard to this Eon